

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

OBDULIA VERGARA
Plaintiff,

V.

TRANSAMERICA LIFE
INSURANCE COMPANY
Defendant.

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CIVIL ACTION NO. 16-cv-2565

TRANSAMERICA’S NOTICE OF REMOVAL

Defendant Transamerica Life Insurance Company (“Transamerica”) file this Notice of Removal pursuant to 28 U.S.C. §§ 1332, 1441, and 1446 as follows:

REMOVAL

1. Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Transamerica, Defendant in Cause No. DC-16-09914, 44th Judicial District, Dallas County, Texas, serves this Notice of Removal from that Court to the United States District Court for the Northern District of Texas, Dallas Division. This Removal is filed within 30 days of Defendant being served with process and within one year of the filing of the lawsuit in State court.

PROCEDURAL BACKGROUND

2. On or about August 15, 2016, Plaintiff Obdulia Vergara (“Plaintiff”) filed her Original Petition, Cause No. DC-09914, in the 44th Judicial District Court, Dallas County, Texas (the “State Court Action”) naming Transamerica as the Defendant.

3. Plaintiff states in her Petition they seek damages over \$200,000, but not more than \$1,000,000.000. Plaintiff seeks recovery of the benefits under the insurance contract with Transamerica and assert claims for damages for breach of contract, bad faith, unfair and deceptive insurance practices, prompt payment of claims, and negligence, and seek actual damages, mental

anguish, exemplary damages, attorneys' fees, statutory damages, prejudgment interest, post judgment interest, costs and claim for relief.

4. Transamerica was served with the Petition on August 18, 2016. Transamerica timely filed this Notice of Removal and a Notice of Removal in the State Court Action.

DIVERSITY

5. **Diversity Jurisdiction.** At the time of the filing of Plaintiff's Original Petition and this Notice of Removal, Plaintiff was a citizen of the State of Texas.¹

6. At the time of commencement of this action and at the time of removal, Defendant Transamerica is an Iowa corporation with its principal place of business in Cedar Rapids, Iowa. For purposes of 28 U.S.C. § 1332(a)(1), Defendant Transamerica is deemed to be a citizen of the State of Iowa.² Thus, complete diversity exists between Plaintiff and Defendant.

7. Process and Plaintiff's Original Petition in Cause No. DC-16-09914 was served on Defendant for the first and only time less than 30 days from the date of the filing of this Notice of Removal and this Notice is being filed within one year of the date suit was filed in State Court.

AMOUNT IN CONTROVERSY

8. Under 28 U.S.C. § 1332, a district court has diversity jurisdiction over any case if (1) the parties are diverse and (2) the matter in controversy exceeds the sum or value of \$75,000, exclusive of interests and costs.³ Ordinarily the federal court ascertains the amount in controversy by looking at the amount claimed in the state court petition.⁴ In this matter, Plaintiff alleged in her Petition she seek damages over \$200,000.00, but not more than \$1,000,000.000.⁵ The amount in

¹ See Plaintiffs' Original Petition.

² See 28 U.S.C. § 1332(c)(1).

³ *Trapasso v. Prudential Property and Cas. Ins. Co.*, 220 F.Supp.2d 628, 631 (E. D. Tex. 2002); 28 U.S.C. § 1332(a).

⁴ *Manguno v. Prudential Prop. & Cas. Ins. Co.*, 276 F.3d 720, 723 (5th Cir. 2002); *Greenberg*, 134 F.3d at 1255; *De Aguilar v. Boeing Co.*, 47 F.2d 1404, 1412 (5th Cir. 1995) *cert. denied*, 516 U.S. 865 (1995) (*De Aguilar II*).

⁵ Plaintiff's Original Petition, para. VI, p. 5.

controversy exceeds \$75,000 exclusive of interest. Thus, the requisite amount in controversy for diversity jurisdictional purposes is satisfied.

9. Simultaneously with the filing of this Notice of Removal, Transamerica is filing a copy of all processes, pleadings and orders served in State Court. A copy of this Notice is also concurrently being filed with the State Court and served upon opposing counsel.

WHEREFORE, PREMISES CONSIDERED, Transamerica prays that this action be removed to this Court from the 44th Judicial District of Dallas County, Texas

Respectfully submitted,

By: /s/ Bernie E. Hauder
BERNIE E. HAUDER
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Attorney-in-Charge

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ATTORNEYS FOR TRANSAMERICA

CERTIFICATE OF SERVICE

This is to certify that on this, the 8th day of September, 2016 a true and correct copy of the above and foregoing document has been forwarded to the following persons as indicated below:

Jeffrey Beltz
The Beltz Law Firm
8360 LBJ Fwy., Ste. 260
Dallas, TX 75243

_____ Via Hand Delivery
 x _____ Via Certified Mail Return Receipt Requested
_____ Via Facsimile
_____ Via E-Mail
_____ Via Electronic Service

/s/ Bernie E. Hauder
BERNIE E. HAUDER